

RESERVED

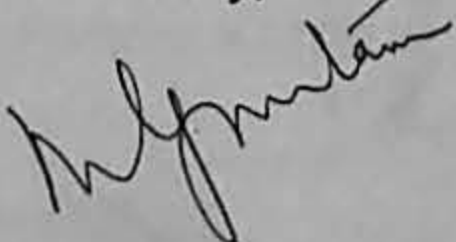
**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Allahabad this the 1st day of April, 2010

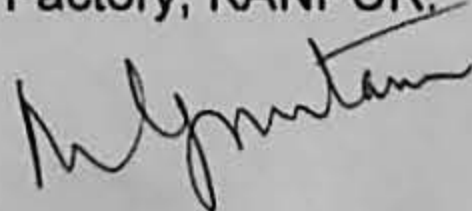
PRESENT:HON'BLE MRS.MANJULIKA GAUTAM, MEMBER-A

Original Application No.1063/2004
(U/s 19 of the Administrative Tribunals Act 1985)

1. Raj Mangal Yadav,
S/o Shri Vindhyachal Yadav,
employed as Durwan under P.No.600782
in Field Gun Factory, KANPUR.
2. Diwan Singh,
S/o late Shri Nathi Lal,
employed as Subedar Durwan under P.No.907304,
in Field Gun Factory, KANPUR.
3. K.N. Yadav, S/o late Jogi Yadav,
employed as Durwan/Jamadar under P.No.907313,
in Field Gun Factory, KANPUR.
4. Ram Roop, S/o late Sukhan Lal,
employed as J. Durwan under P.No.907312,
in Field Gun Factory, KANPUR.
5. P.N.Bajpai, S/o late S.N.Bajpai,
employed as J. Durwan under P.No.907320,
in Field Gun Factory, KANPUR.
6. Amar Singh, S/o late Sunder Singh,
employed as J. Durwan under P.No.907322,
in Field Gun Factory, KANPUR.
7. Ayodhya Singh, S/o late Ram Karan Singh,
employed as J. Durwan under P.No.907323,
in Field Gun Factory, KANPUR.
8. Lallan Ram, S/o Shri late Jageshwar Ram,
employed as J. Durwan under P.No.907324,
in Field Gun Factory, KANPUR.
9. Bandhu Singh, S/o late Chamaru Singh,
employed as J. Durwan under P.No.907340,
in Field Gun Factory, KANPUR.
10. R.P.Singh, S/o late Triveni Singh,,
employed as Durwan under P.No.907317,
in Field Gun Factory, KANPUR.



11. S.K.Shukla, S/o late Rameshwar Prasad Shukla, employed as Durwan under P.No.907319, in Field Gun Factory, KANPUR.
12. Hari Lal, S/o late Aganu, employed as Durwan under P.No.907328, in Field Gun Factory, KANPUR.
13. Anoop Singh, S/o late Dhanpat Singh, employed as Durwan under P.No.907331, in Field Gun Factory, KANPUR.
14. Munni Lal, S/o late Middi Lal, employed as Durwan under P.No.907332, in Field Gun Factory, KANPUR.
15. Gulab Singh, S/o late Bhajan Singh, employed as Durwan under P.No.907341, in Field Gun Factory, KANPUR.
16. Munna Lal, S/o late Murli, employed as Durwan under P.No.907343, in Field Gun Factory, KANPUR.
17. Ram Bhajan, S/o late Harpal, employed as Durwan under P.No.907344, in Field Gun Factory, KANPUR.
18. Ravindra Prakash, S/o late Gopi Ram Bhatt, employed as Durwan under P.No.907347, in Field Gun Factory, KANPUR.
19. Bankey Lal, S/o late Bhim Lal, employed as Durwan under P.No.907351, in Field Gun Factory, KANPUR.
20. Ram Vichar, S/o late Ram Chandra Prasad employed as Durwan under P.No.907355, in Field Gun Factory, KANPUR.
21. V.K.Sonker, S/o late Maikoo Lal Sonker, employed as Durwan under P.No.907359, in Field Gun Factory, KANPUR.
22. B.M.Soni, S/o late Mool Chand, employed as Durwan under P.No.907358, in Field Gun Factory, KANPUR.
23. L.L.Nirmal, S/o late Ram Din Nirmal, employed as Durwan under P.No.907360, in Field Gun Factory, KANPUR.
24. Drig Pal, S/o late Ram Shanker, employed as Durwan under P.No.907364, in Field Gun Factory, KANPUR.



25. Satyendra Tripathi, S/o late S. Tripathi,
employed as Durwan under P.No.907368,
in Field Gun Factory, KANPUR.
26. Veersay, S/o late Ramesh,
employed as Durwan under P.No.907369,
in Field Gun Factory, KANPUR.
27. Jitendra Kumar, S/o late Kali Charan,
employed as Durwan under P.No.907372,
in Field Gun Factory, KANPUR.

...Applicants

(By Advocate : Sri R.K.Shukla)

Versus

1. Union of India through the Secretary,
Ministry of Defence,
Deptt. of Defence Production & Supplies,
Govt. of India, NEW DELHI -11.
2. The Secretary,
Ordnance Factory Board,
10-A, S.K. Bose Road, KOLKATA -1.
3. The General Manager,
Field Gun Factory,
Kalpi Road, KANPUR.

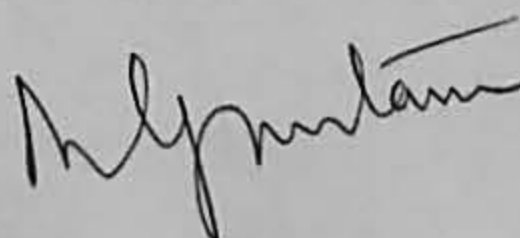
...Respondents.

(By Advocate : Sri. Firoz Ahmed)

ORDER

HON'BLE MRS. MANJULIKA GAUTAM, MEMBER-A

The applicants in this O.A. are working on the post of Durwan in the Field Gun Factory, Kanpur under the Ministry of Defence. This O.A. has been filed against the order dated 1.8.2004 by which the recovery of the amount paid to each applicant subsequent to 2.4.1998 as night duty allowance has been ordered to be recovered . O.A.1561/03 was filed by Suraksha Darwan Sangh, Small Arms Factory, Kanpur in which a stay was granted on 24.12.2003. Another O.A.724/04 was also filed by similarly

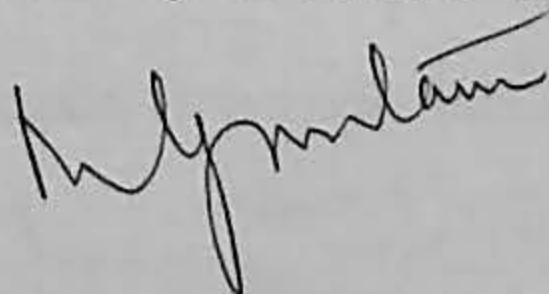


situated persons in which orders were passed jointly with regard to the O.A.1561/03 and M.A.No.434/02 in Dy. No.377/02. The operative part of the order reads as follows:

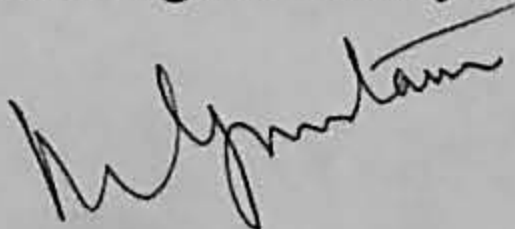
"8. Accordingly, the O.As succeed and are allowed in part. The direction contained in the impugned orders for recovery of Night Duty Allowance paid before the issuance of Ministry of Defence letter dated 25.9.2001 is quashed. In case any recovery has already been made, the same shall be refunded to the applicants within a period of three months from the date of receipt of a copy of this order."

2. Although the applicants in the present O.A. were placed in similar circumstances in spite of the order referred to above, recovery order dated 11.8.2004 were issued for recovery of night duty allowance paid to them and therefore, the present O.A. has been filed seeking the following main reliefs:

- i. *The Hon'ble Court k be pleased to issue a writ, order or direction in the nature of Certiorary quashing the respondent's order dated 11.8.2004 (Annexure A-1) proposing to make recovery from the pay and allowances/wages of the petitioners from the month of August, 2004 in lieu of night duty allowances already paid to them from 2.4.1998 & onwards.*
- ii. *The Hon'ble Court be pleased to reterain the respondents from making any recovery from the salaries of the applicants and be further directed to refund the amount already recovered from the pay & allowances for the month of August, 2004.*
- iii. *The Hon'ble Court be pleased to grant any other relief, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, to the applicants.*



3. In the counter affidavit filed by the respondents it has been stated that, the Department of Personnel and Training issued U.O. Note dated 12.10.1995 wherein it was stated that, since normal duties of Chowkidars/guards maintain an element of working at night, they are not eligible for night duty allowances (Annexure CA-3). The matter went up to the Hon'ble Supreme Court in S.L.P. 25134/96 and the Hon'ble Supreme Court in its judgement dated 1.8.1997 held that, the U.O. Note dated 12.10.1995 from the Department of Personnel and Training applies to all the Departments of Government of India. The Ordnance Factory Board, Kolkata took up the matter with the Ministry of Defence saying that the category of Durwans are totally different from Chowkidars, but ultimately the Ordnance Factory Board, Kolkata vide letter dated 25.9.2001 informed all the factories that the matter is with the Ministry of Defence and a view was taken that night duty is an inseparable characteristic of the job of Durwans and hence they are not different from Chowkidars and therefore, Durwans are no more entitled to night duty allowance with effect from 2.4.1998. Against the orders dated 25.9.2001, O.A. No.407/2002 was filed by Kashi Prasad & 105 others Vs. Union of India and others in CAT, Jabalpur Bench, wherein the Tribunal vide judgement dated 6.3.2003 directed the Union of India to take up a final decision in the matter. In pursuance of the said order the Ministry of Defence again conveyed this decision to Ordnance

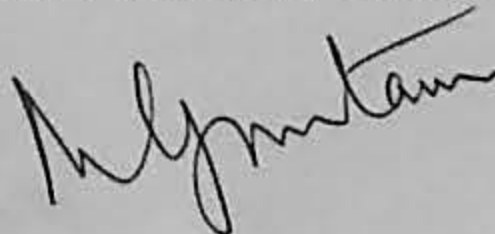


Factory Board, Kolkata vide I.D. dated 22.9.2003 wherein it is held that:

"The matter has been examined in consultation with OFB. It is felt that the duties of the Durwans are similar to the duties of a Chowkidar and Night Duty is an inseparable part of the job of the Durwan. The Durwans are accordingly not eligible for Night Duty Allowance with effect from 2.4.1998 in the light of Department of Personnel & Training (Estt/Allowance) U.O.Note dated 12.10.1995 on the subject."


4. Accordingly, all the Factories/Units were informed by Ordnance Factory Board, Kolkotta vide Fax No.658/A/A dated 23.9.2003 (Annexure CA-7). Thereafter, the Ordnance Factory Board, Kolkata further ordered vide letter dated 7.11.2003 that recovery of amount towards Night Duty Allowance may be deducted from the salaries/wages of Durwans and accordingly the impugned orders dated 11.8.2004 were issued.

5. Having heard both parties and perused the record on file we are of the opinion that, it is not for the Tribunal to go into the merit of the case and therefore, as the issue has been finally resolved that night duty allowance would not be paid to the Durwans the matter rests there. This O.A. has been filed against the recovery being made of amount paid as night duty allowance since 2.4.98. From the record it is clear that the matter was under consideration and had attained finality on 22.9.2003. Therefore, it can be given effect



to only prospectively whereas the recovery is being made with retrospective effect i.e. from 2.4.1998. It is also undisputed that the payment made to the Durwans as night duty allowance was not obtained by fraud or any malpractice, and therefore, as desired by the Hon'ble Supreme Court in Shyam Babu Verma's case decided on 8.2.1994 and several decisions of the Tribunal including R.B.Shukla and ors Vs. U.O.I., CAT., Allahabad, the recovery being made from the applicants for payments made to them subsequent to 2.4.1998, and till 23.9.2003 is not sustainable in law. The impugned orders are therefore, quashed and set aside with direction to the respondents that if any such recovery has been made it may be refunded to the applicants within a period of three months from the date of receipt of copy of this order.

6. O.A. is disposed of as above. No costs.


MEMBER(A)